the jurisdiction where the land was located. The rule exemplified in these cases offers an interesting illustration of the strength of the local venue tradition of the common law,—a tradition which Lord Mansfield unsuccessfully tried to revise upon the principle that only proceedings *in rem* were essentially local. *Mostyn* v. *Fabrigas,* 1 Cowp. 161; Erskine's argument in *Doulson* v. *Matthews,* 4 T. R. 503. An action against a county of one State brought in the courts of another State, where the process of attachment is available would seem to present no difficulty. *Van Horn* v. *Kittitas County,* 28 Misc. (N. Y.) 333, affirmed, 46 N. Y. App. Div. 623.

WILLS—EXECUTORY DEVISE—REPUGNANCY—FAILURE OF PRECEDING INTEREST.—Testatrix by will gave her freeholds absolutely to A. "subject to the following bequests. * * * Secondly I desire that after my executor's (A's) death whatever of my freehold properties shall remain shall be given to" a named charity. *Held,* that if A had survived the testatrix the gift to the charity would have been repugnant and void and that A would have taken absolutely, but that, A having died in the lifetime of the testatrix, the doctrine of repugnancy did not apply, and the gift to the charity was accelerated and took effect. *In re Dunstan. Dunstan* v. *Dunstan,* [1918] 2 Ch. 304.

Where property is given by will to a devisee absolutely, any further disposition of such property is generally ineffective. A provision that if the first taker does not give the property away in his life-time or dispose of it by will, it shall not go to his heir-at-law or personal representative is repugnant and void; for what is once vested absolutely in a man cannot be taken from him out of the course of devolution at his death by any expression or wish on the part of the testator. It may happen, however, that the original gift never takes effect,—e. g., through the death of the devisee or legatee in the lifetime of the testator. The older cases made no exception in this situation. In 1855 Sir John Romilly, M. R., held that an executory bequest over in defeasance of a previous absolute bequest of personalty failed although the first legatee predeceased the testator. *Hughes* v. *Ellis,* 20 Beav. 193. The same view had been taken in *Andrew* v. *Andrew,* (1845) 1 Coll. 686 (consumable articles), and *Harris* v. *Davis* (1844) 1 Coll. 416, 9 Jur. 269; *Hughes* v. *Ellis* was followed in *Greated* v. *Greated* (1859) 26 Beav. 621. These cases were deservedly criticised by James, L. J., in *In re Stringer's Estate* (1877) 6 Ch. Div. 1, 14-15. As Justice James said, it is difficult to see why this principle should apply to a case "where the original gift never did take effect at all, because there is no repugnance. There may be repugnance between the gift over and the gift intended to be made, but I am not quite sure that that ought to be applied to a case, supposing the point arose, where there was simply the death of the person creating a lapse." So far as bequests of personalty are concerned, the modern doctrine was established in *In re Lowman* [1895] 2 Ch. 348. Lindley, L. J., said: " * * * where there are successive limitations of personal estate in favour of several persons absolutely, the first of them who survives the testator takes absolutely, although he would have taken nothing if any other legatee had survived and taken; or in other words, in the case supposed

the effect of the failure of an earlier gift is to accelerate, and not destroy, the later gift. * * * The doctrine of repugnancy has no application to gifts that fail; the doctrine does not come into operation until somebody takes, and it is only those limitations which defeat the interest some one takes that are void, on the ground that they are inconsistent with what is given to him." Lindley, L. J., expressly limited his decision to personal estate. The question therefore remained whether the same principle would apply to devises of land. The *dictum* of James, L. J., applied alike to land realty and personalty and Mr. Sweet expressed the opinion that when the point arose with regard to realty the courts would hold it subject to the same rule. 1 JARMAN, WILLS (ed. 6) 452. This problem seems to have been presented for the first time in the principal case. Neville, J., held that no sound distinction could be drawn between real and personal estate and did not hesitate to extend the doctrine of *In re Lowman* to real estate. The passing of another futile distinction is pleasant to record.